

# **Exhibit 3**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

EPIC GAMES, INC.,

Plaintiff, Counter-  
Defendant

v.

APPLE, INC.,

Defendant,  
Counterclaimant.

Case No. 4:20-CV-05640-YGR

DECLARATION OF ADAM FOSSA IN  
RESPONSE TO EPIC GAMES, INC.'S  
ADMINISTRATIVE MOTION TO SEAL  
SUPPORTING EXHIBITS TO J. WESLEY  
EARNHARDT'S DECLARATION

I, Adam Fossa, declare as follows:

1. I am currently the Senior Director of Digital Category Management at Microsoft Corporation ("Microsoft"). The facts stated in this declaration are based on my own personal knowledge and, if called as a witness, I could and would testify to those facts.

2. In my current role at Microsoft, I lead the team responsible for business management of Microsoft Store digital gaming category on Xbox and Windows. I have been employed with Microsoft since January 2004. Based on my work experience, I am familiar with Microsoft's business strategies and financial data as it relates to the Microsoft Store on Xbox. Microsoft keeps such information confidential to protect itself and its partners from potential harm.

3. I understand that Epic Games, Inc. ("Epic") submitted the document bearing bates-stamped number MSFT\_EPIC\_00008041 that contains Microsoft confidential information as an exhibit in support of a motion they filed in the above-captioned legal case. I also understand Microsoft is concurrently filing a declaration in response to Epic's motion, and I make this declaration in support of Microsoft's declaration. I further understand that Epic filed a sealed copy of the document bearing bates-stamped number MSFT\_EPIC\_00008041 as part of its submission. I have reviewed the document bearing bates-stamped number

1 MSFT\_EPIC\_00008041 and explain below why the portions of the sealed document that are  
2 redacted in Exhibit A attached hereto contain sensitive and highly confidential information that  
3 would cause serious harm to Microsoft if publicly released.

4 4. The highlighted portions of the document bearing bates-stamped number  
5 MSFT\_EPIC\_00008041 filed under seal are confidential to Microsoft and would result in harm if  
6 publicly disclosed. Microsoft treats the information sensitively, and only discloses it to a select  
7 group of individuals on a need-to-know basis.

8 5. The highlighted portions of the document bearing bates-stamped number  
9 MSFT\_EPIC\_00008041 are confidential and would result in harm if publicly disclosed. The  
10 highlighted information reflects non-public financial data regarding Microsoft Store on Xbox  
11 costs related to third-party gaming transactions and internal financial system details reflecting the  
12 financial conditions relied on to produce the line item data. Such information discloses the  
13 Microsoft Store on Xbox business strategy, including line item costs associated with operating the  
14 Microsoft Store on Xbox. If Microsoft's competitors were to obtain such information,  
15 competitors would have valuable strategic information that could be used to undercut Microsoft's  
16 position in the gaming industry.

17 I declare under the penalty of perjury of the laws of the United States of America that the  
18 foregoing is true and correct.

19 Executed this 14th day of May 2021 in Snoqualmie, Washington.

20  
21 /s/ Adam Fossa  
Adam Fossa

**ATTESTATION**

I, David P. Chiappetta, am the ECF user whose ID and password are being used to file the above Declaration. In compliance with Civil Local Rule 5-1(i)(3), I hereby attest that Adam Fossa has concurred in the aforementioned filing.

/s/ David P. Chiappetta  
David P. Chiappetta

# **EXHIBIT A**

**Redacted Version of Document Sought to  
be Sealed**

Xbox/Gaming Store Costs

Redacted

A - Value		Version - Fiscal Year	A - FiscalYear	B - Quarter	
		Actuals - FY19	Actuals - FY20	Actuals - FY21	
		FY19	FY20	FY21	
Mercury - B - Product Division	Attribute - Windows - COGS XBL Category			FY21-Q1	FY21-Q2
3P Gaming Transactions	Redacted				
Grand Total					